

*United States Court of Appeals
for the Second Circuit*



**BRIEF FOR
APPELLEE**

76-2048

To be argued by
GERALD E. FARRELL

IN THE
UNITED STATES COURT OF APPEALS
For The Second Circuit

Docket No. T-5938

JOHN ANTHONY HOUSAND,
Plaintiff-Appellant

vs.

GERALD E. FARRELL,
Defendant-Appellee

B
D/S

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

BRIEF OF THE DEFENDANT-APPELLEE
GERALD E. FARRELL

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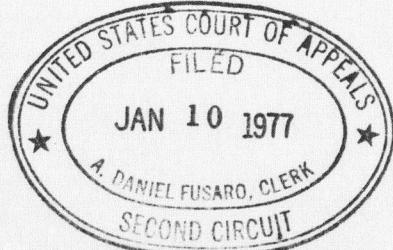


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BRIEF OF DEFENDANT-APPELLEE
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Statement of the Case

During the late fall of 1975, the plaintiff and the defendant exchanged letters concerning a civil suit the plaintiff desired to bring against an out-of-state medical doctor. The defendant never commenced representation of the plaintiff in this matter but did make inquiries of the plaintiff for certain information relative to reaching a decision of whether he would, in fact, represent the plaintiff. On December 24, 1975, the defendant informed the plaintiff that any decision concerning representation would

have to be delayed until representation of Joseph Crisafi had come to an end.

Thereafter, in February of 1976, Joseph N. Crisafi was subpoenaed by the plaintiff to testify in the case of United States vs. John A. Housand. The defendant was appointed to act as attorney for Mr. Crisafi, and Mr. Crisafi invoked his privileges under the Fifth Amendment of the United States Constitution and declined to answer questions put to him by the plaintiff's attorney.

At no time did the defendant inquire or seek information that could be harmful to the plaintiff's interest insofar as it pertained to the case of United States vs. John A. Housand, nor was any information given by the plaintiff that would be harmful in that case.

Subsequently, the plaintiff was convicted and sentenced to be incarcerated. Thereafter, he brought suit against the defendant alleging a conflict of interest. The United States District Court dismissed the complaint sua sponte on March 10, 1976 and on March 12, 1976 entered a judgment accordingly.

Questions Presented

1. Did the District Court err when it dismissed the plaintiff's complaint sua sponte?
2. Did the Court err in finding a lack of jurisdiction?

Argument

1. Did the District Court err when it dismissed the plaintiff's complaint sua sponte? The plaintiff has argued for a liberal reading of his complaint and his desired amendments to said complaint. The District Court below, in its Memorandum of Decision noted "The suit is totally baseless." The plaintiff makes no claim whatsoever as to where he was hurt by the defendant's alleged representation of him.

Mostly, the plaintiff seems perturbed that I did not talk Joseph Crisafi out of exercising Fifth Amendment privileges in the case of United States vs. Housand. On Page Nine of his brief, he argues that the invocation of this privilege was "questionable", but at the bottom of Page Three argues that Crisafi had committed perjury before the Grand Jury. It was this testimony before the Grand Jury that was the subject of Housand's inquiry of Crisafi and to which Crisafi invoked Fifth Amendment privileges against answering.

Crisafi said nothing at the Housand trial. A letter cited by the plaintiff shows that the government was of the opinion that Crisafi had lied before the Grand Jury.

The plaintiff completely fails to show how the defendant's claimed representation on a lawsuit to be initiated against a doctor had anything to do with his being found guilty of federal

criminal charges. Housand is, at most, looking for a collateral way to attack this criminal conviction.

The Court was correct in its conclusion that the suit is baseless.

2. Did the Court err in finding a lack of jurisdiction?

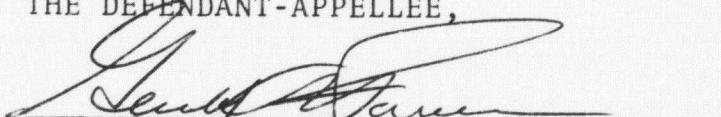
The plaintiff never did correct the jurisdictional deficiency, and fails to show any diversity of citizenship. Also, the District Court concluded that the allegations totally failed to indicate that any amount is in controversy.

The District Court's conclusion of lack of jurisdiction was correct.

Conclusion

Because of the foregoing reasons, the District Court's judgment of dismissal sua sponte were correct, and the plaintiff-appeallant's appeal should be denied.

Respectfully Submitted,
THE DEFENDANT-APPELLEE,

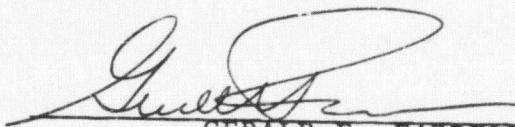


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CERTIFICATION:

This is to certify that a copy of the within was mailed
this 27th day of October, 1976 to:

Mr. John Anthony Housand
No. 25790-145
Pembroke Station
Danbury, Connecticut 06810



GERALD E. FARRELL
Commissioner of the Superior Court